
(1980) 04 BOM CK 0033

Bombay High Court

Case No: Income-tax Reference No. 28 of 1971

Commissioner of
Income Tax, Bombay
City-III

APPELLANT

Vs

Trade Wings Private
Ltd.

RESPONDENT

Date of Decision: April 18, 1980

Citation: (1980) 126 ITR 399 : (1980) 4 TAXMAN 206

Hon'ble Judges: Sawant, J; M.N. Chandurkar, J

Bench: Division Bench

Judgement

Chandurkar, J.

The assessee-company which was carrying on business as travel agents joined hands with some other travel agents" firms and a new company known as M/s. Travel corporation of India Pvt. Ltd., which is a company incorporated under the Companies Act, 1956, was formed with an authorities capital of Rs. 50 lakhs divided into 46,660 equity A shares of Rs. 10 each and 4,53,340 equity B shares of Rs. 10 each. On the others with the Travel Corporation of India Pvt. Ltd., under which the assessee transferred the inward foreign Tourist activities to the Travel Corporation of India Pvt. Ltd., and the Travel Corporation of India

2. In the assessment proceedings for the assessment year 1962-63, this sum of Rs. 58,300 was treated as capital gains in the hands of the assessee by the ITO. The AAC held that there was an exchange or relinquishment of an asset by the assessee, the value of which was estimated by him as on January 1, 1954, at Rs. 10,000 and the amount of capital gains was thus reduced to Rs. 48,300. The Tribunal on a consideration of the terms of the agreement took the view that "barring the transfer of benefit of all pending contracts, engagements, orders, custom, clientele, goodwill and property in connection with the said business there was no transferred their inward foreign tourist activities in India". The Tribunal found that all that was transferred was intangible property, namely,

the right to carry on those activities. In substance, the Tribunal found that what was transferred was the goodwill of the assessee in its business pertaining to inward foreign tourist activities in India. The Tribunal, however, in a latter part of its order, took the view that as far as the transfer of the benefit of all pending contracts, engagements, orders, custom, clientele, goodwill and property in connection with the said business is concerned, there was a transfer brought about from the assessee and others to the Travel Corporation of India Pvt. Ltd., of some tangible assets and the same cannot be termed as part of the goodwill of the assessee and others in respect of the respective business. While observing that there was a transfer of some tangible assets, the Tribunal had not indicated which were the tangible assets transferred. The Tribunal dissected the total amount of Rs. 58,300 into two amounts of Rs. 10,300 and Rs. 48,000. Rupees 48,000 represented the value of the goodwill, according to the Tribunal, and Rs. 10,300 was "the value of the tangible assets transferred by the assessee". The Tribunal, therefore, partly allowed the appeal by holding that there was no capital gains liability to the extent of Rs. 48,000 which was the value of the goodwill and the capital gains liability was held attracted to the extent of Rs. 10,000, the so-called tangible assets being valued at Rs. 300 as on January 1, 1954.

3. Arising out of this order of the Tribunal, three questions have been referred to this court, the first two at the instance of the revenue and the third at the instance of the assessee. They are as follows :

"(1) Whether, on the facts and in the circumstances of the case, any capital gains liability arises against the assessee in respect of the goodwill transferred by it to the Travel Corporation ?

(2) Whether there was any material for the Tribunal to value the goodwill and the tangible assets transferred by the assessee to the Travel Corporation at Rs. 48,00 and Rs. 10,300, respectively ?

(3) Whether, on the facts and in the circumstances of the case, any capital gains liability arises against the assessee in respect of these assets transferred by it to the Travel Corporation ?"

4. So far as the first question is concerned, the matter is concluded against the revenue as far as this court is concerned by the decision of this court in [Commissioner of Income Tax, Bombay City-III Vs. Home Industries and Co.](#), in which goodwill has been held to be a self-created and self-generated asset and cannot be said to have been acquired by an assessee at any particular point of time or for any cost in terms of money and that, in such a case, liability to capital gains tax on the transfer of the goodwill is not attracted.

5. So far as the second question is concerned, it is difficult for us to see how the finding recorded by the Tribunal can at all be sustained. The Tribunal, while observing in the earlier part of the order that by the agreement intangible property, namely, the right to

carry on the activities of the assessee was transferred, has observed in the later part of the same paragraph that some tangible assets have also been transferred. The value of these so-called tangible assets as on January 1, 1954, has been determined at Rs. 300. The orders of none of the taxing authorities including the Tribunal indicate which were the tangible assets which were transferred and whose value was being determined at Rs. 10,300. There was thus no justification for breaking up the amount of Rs. 5800, into Rs. 48,000 as value of the goodwill and Rs. 10,300 as value of some tangible assets. Question No. 2 will, therefore, have to be answered in the negative and in favour of the assessee. Consequently, question No. 3 referred at the instance of the assessee will have to be answering the negative and in favour of the assessee.

6. The question referred are accordingly answered as follows :

Question No. 1 : In the negative and in favour of the assessee.

Question No. 2 : In the negative and in favour of the assessee.

Question No. 3 : In the negative and in the favour of as no tangible assets were transferred.

7. Revenue to pay the costs of this reference.